

Department of Defense

215.605

215.972 Modified weighted guidelines method for nonprofit organizations.

215.973 Alternate structured approaches.

215.974 Fee requirements for cost-plus-award-fee contracts.

215.975 Reporting profit and fee statistics.

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36326, July 31, 1991, unless otherwise noted.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.

See 225.872 for additional guidance on procedures for purchasing from qualifying countries.

215.406-2 Part I—The Schedule.

(g) When a contract contains both fixed-priced and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

[60 FR 34470, July 3, 1995; 60 FR 43191, Aug. 18, 1995]

215.414 Forms.

This does not preclude use of letter RFPs and RFQs, provided their use complies with other requirements of the FAR and this regulation.

Subpart 215.6—Source Selection

215.605 Evaluation factors and subfactors.

(b)(2)(A) In acquisitions which require use of the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged business in performance of the contract shall be addressed in source selection.

(1) For acquisitions other than those based only on cost or price competition, the contracting officer shall evaluate the extent to which offerors identify and commit to small business and to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(2) Criteria for evaluation may include—

(i) The extent which such firms are specifically identified in proposals;

(ii) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(iii) The complexity and variety of the work small firms are to perform;

(iv) The realism of the proposal;

(v) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(vi) The extent of participation of such firms in terms of the value of the total acquisition.

(3) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(4) When an evaluation includes the criterion in paragraph (b)(2)(A)(2)(i) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(B) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk is likely to result in significant costs or savings.

(c) In competitive acquisitions of services—

(i) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(ii) The weighting of costs must be commensurate with the nature of the services being acquired.

(A) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(1) The effort being contracted for departs from clearly defined efforts; or

(2) Highly skilled personnel are required.

(B) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(1) Services being acquired are of a routine or simple nature;

(2) Highly skilled personnel are not required; or

(3) The product to be delivered is clearly defined at the outset of the acquisition.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 57 FR 14992, Apr. 23, 1992; 59 FR 27669, May 27, 1994; 61 FR 18687, Apr. 29, 1996; 61 FR 50452, Sept. 26, 1996]

215.607 Disclosure of mistakes before award.

(c)(3) The designee is the head of the contracting activity, who may redelegate this authority to the chief of the contracting office.

215.608 Proposal evaluation.

(a)(1) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see FAR 37.115) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(i) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(ii) Unbalanced distribution of uncompensated overtime among skill lev-

els and its use in key technical positions.

(2) When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

(b) Except for determinations based on violations or possible violations of section 27 of the Office of Federal Procurement Policy (OFPP) Act, and unless otherwise specified in department/agency regulations, the contracting officer shall make the written determination. Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 61 FR 18687, Apr. 29, 1996; 62 FR 2612, Jan. 17, 1997; 63 FR 11528, Mar. 9, 1998]

215.611 Best and final offers.

(c)(i) Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from—

(A) The source selection authority and the senior procurement executive (SPE) for competitive negotiated acquisitions under formal source selection (see FAR 15.612). The SPE may delegate this authority to a level no lower than the head of the contracting activity.

(B) The head of the contracting activity (HCA) for all other competitive negotiated acquisitions. The HCA may delegate this authority to the chief of the contracting office.

(ii) Each HCA shall establish a system for reporting and documenting additional requests for best and final offers. Systems shall include as a minimum—